



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CHESHIRE COUNTY COMMISSIONERS

Complainant

v.

STATE EMPLOYEES ASSOCIATION OF
NEW HAMPSHIRE/COUNTY CORRECTIONS
DEPARTMENT

Respondent

CASE NO. S-0385:1

DECISION NO. 93-112

APPEARANCES

Representing Cheshire County Commissioners:

Kathleen Peahl, Esq.

Representing County Corrections Department:

Ward P. Freeman

Also Appearing:

Richard N. Van Wickler, Cheshire County
Dale Thompson, Cheshire County
Diane Spaulding, Cheshire County
Richard Boudreau, Cheshire County

BACKGROUND

The Cheshire County Commissioners (County) filed a Modification Petition on December 23, 1992 seeking to delete the position of corrections secretary from the Corrections Department bargaining unit as confidential. RSA 273-A:1 IX (c). The State Employees Association of New Hampshire (Union) filed exceptions to the petition on January 6, 1993. After a continuance sought and granted due to the illness of a witness, this matter was heard by the undersigned hearing officer on June 24, 1993.

FINDINGS OF FACT

1. Cheshire County is a "public employer" of employees in its Corrections Department within the meaning of RSA 273-A:1 X.
2. The State Employees Association of New Hampshire is the duly certified bargaining agent for employees of the County's Corrections Department.
3. The composition of the original bargaining unit in 1992 was the product of an agreement reached by the parties prior to the certification election which was held on May 6, 1992. That bargaining unit consisted of Correctional Officer I, Correctional Officer II and Secretary positions. It excluded the positions of Supervisor and Assistant Supervisor.
4. The incumbent corrections secretary was hired on January 21, 1993. The job description in effect at the time of her hiring was dated 4/91 and lists as main job functions "secretarial and general office duties to relieve Correctional Supervisor of clerical details," "reports, schedules and correspondence as required," and "decisions on minor administrative matters." It contains no reference to the secretary's involvement with confidential labor relations matters. There is no evidence that she has been asked to perform such tasks. Richard Van Wickler, Corrections Superintendent, testified that he has had no discussions on labor relations matters with her. At the time of hiring, the corrections secretary was told that the position was a union one which was being negotiated for exclusion although no reason was expressed for that exclusion.
5. Prior to the hiring of the corrections secretary, a correctional officer II was performing clerical work for the Corrections Department. This correctional officer II was not in a protected (confidential) position and performed no functions with respect to labor relations. Prior to July of 1992, one individual was responsible for running both the nursing home and the corrections facility; therefore, his nursing home secretary handled confidential matters for both facilities.
6. Richard Van Wickler was hired as Corrections Superintendent on June 1, 1993 and reports to

the County Commissioners. He is the county representative on the bargaining team for this bargaining unit. With his hiring, the administration of the corrections facility has been divorced from the administration of the nursing home. Van Wickler has no confidentially excluded clerical employees available to him at the corrections facility.

7. Van Wickler has proposed changes to the job description for the corrections secretary which would delete responsibilities involving inmate contact. County Ex. No. 1. In particular, those changes would eliminate the need to (1) assist in completing admission intake forms including the registering of inmates and the daily count, (2) update medical records and daily medicine logs, (3) help serve inmates lunch, and (4) greet and escort visitors. None of the proposed changes to the job description makes reference to the secretary's becoming involved with confidential labor relations matters. The proposed changes to the job description had not been adopted at the time of hearing.
8. The incumbent corrections secretary was hired during the term of County Commissioner Dale Thompson who testified that he had not contemplated giving this employee any confidential labor relations functions when she was hired in January of 1993. He also noted that such responsibilities were not contemplated in her 1991 job description (Union Ex. No. 1). The commissioners did not consider changes to this job description before filling the vacancy last January.

DECISION AND ORDER

Almost everything is in place to warrant the exclusion of the corrections secretary from the bargaining unit as a confidential employee under RSA 273-A:1 IX (c) except either the designation of "duties implying a confidential relationship" in a newly adopted job description or the assignment of such duties by direct tasking to the incumbent. Neither has occurred; therefore, it is inappropriate to "imply a confidential relationship" in the abstract and prematurely.

Appeal of the City of Laconia, 135 N.H. 421 (1992), cited by petitioner is applicable to this case. There, the administrative secretary to the personnel director was alleged to "assist and act in a confidential capacity to a manager who is intimately involved in labor negotiations" and was found by the Court to "play a vital role in the City's labor negotiation preparation." 135 N.H. 421 at

422, 424. The secretary's manager, likewise, was forced to rely on this individual "to prepare confidential materials relative to the labor negotiations process." 135 N.H. 421, 424. The telling difference between the Laconia case and the pending petition is that in Laconia the secretary was actively involved, i.e. she "played" a role, "assisted" her manager, and was "relied upon" by him. These events have yet to occur in Cheshire County and certainly could not have happened when the petition was filed, namely, even before the position vacancy was filled and the incumbent was hired.

This case has all the makings of a confidential exclusion under RSA 273-A:1 IX (c). Once the employee is assigned or tasked to act in that confidential capacity and/or the job description is modified to require such responsibilities, the position likely will be excluded, as explained in Laconia. Until that happens, however, the petition must be DISMISSED as premature, based on conjecture and not on observable conduct or facts.

So ordered.

Signed this 25th of August, 1993.



PARKER DENACO
Hearing Officer